

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION No.904 of 1995.

- 1] Vivekanand Shikshan Prasarak Mandal,
Malshiras, At Post Malshiras, Dist.
Sholapur.
- 2] The President,
Vivekanand Shikshan Prasarak Mandal,
Malshiras, At Post Malshiras,
District Sholapur.
- 3] The Secretary,
Vivekanand Shikshan Prasarak Mandal,
Malshiras, At Post Malshiras,
District Sholapur.
- 4] Headmistress,
Kanya Prashala, Malshiras,
At Post Malshiras,
District Sholapur.

.. **..PETITIONERS.**

Versus.

Shri.Kundalik Sukhdeo Shinde,
age adult, Occupation ..
Residing at and Posdt Purandwade
Tal. Malshiras, District Sholapur.

.. **..RESPONDENT.**

Mr.Sandeep Phatak i/b Mr. A.V.Anturkar
for the Petitioners.

Mr. S.J. Rairkar for Respondent.

CORAM:R.M.S.KHANDEPARKAR,J.
DATED:9TH NOVEMBER, 2006.

ORAL JUDGMENT.

1. Heard.
2. The petitioners challenge the judgment

and order dated 20th October, 1994 passed by the School Tribunal, Pune in Appeal No.130 of 1993. By the impugned order the Tribunal while dismissing the Appeal filed by the respondent and upholding the award of termination of services dated 20th March, 1993 had directed the petitioners to pay emoluments to the respondent for the period from the date of termination in November, 1994 within a period of three months from the date of impugned order.

3. It is this direction for payment of the emoluments for the period from March, 1993 to November, 1994 to the respondent, is under challenge in this petition on the ground that the such direction is without jurisdiction.

4. The learned Advocate appearing for the petitioners drawing attention to the impugned judgment, submitted that the said direction has been issued on account of alleged violation of the interim order which was granted by way of stay to the order of termination of services dated 20th March, 1993 during the pendency of the appeal before the School Tribunal. He further submitted that

such power is sought to be exercised on assumption that the School Tribunal has power to initiate contempt proceedings against the parties violating its order, when the settled law is that School Tribunal constituted under the M.E.P.S.Act does not possess any such power. The learned Advocate appearing for the Respondent, on the other hand, has submitted that in view of the fact that the stay order granted by the Tribunal was not complied with the School Tribunal has merely directed the petitioner to compensate the respondent for the period during which the stay was in force and, therefore, it was duty of the petitioners to comply with the said order of the School Tribunal.

5. It is not in dispute that on admission of the Appeal for final hearing before the School Tribunal the said Tribunal had granted stay to the order of termination of services which remained in force till the disposal of the appeal on 20th October, 1994. In other words, the petitioners were not permitted to give effect to the order of termination of services during the pendency of the appeal before the School Tribunal. The Tribunal by

the impugned order on the ground that the petitioners did not comply with the said stay order granted by the School Tribunal, has proceeded to direct them to pay emoluments during the said period during which the stay order is said to have not been complied with by the petitioners. The impugned order, in fact, apparently discloses that such direction was sought to have been given in exercise of the power to punish the party to the proceedings who had not complied with the order of the Tribunal. Specific observation, in that regard in the impugned order that " I do not propose to take matter of contempt any further except directing" apparently discloses that the Tribunal assumed the powers to punish the petitioners for the contempt of Court on account of the violation of its order. However, as rightly submitted on behalf of the petitioners before proceeding to give such direction in the alleged contempt proceeding, the School Tribunal did not ascertain as to whether the School Tribunal constituted under the M.E.P.S. Act has at all any power to punish the party to the proceedings before the School Tribunal for non compliance of its order, nor

did it ascertain whether in fact there was any violation of its order by the petitioners. The impugned order nowhere discloses any analysis of the materials on record which could reveal that the petitioners had in fact failed to comply with the order of stay granted by the Tribunal.

6. It is pertinent to note that the petitioners herein on an application having been moved by the respondent for alleged violation of the order of the Tribunal, had filed their reply wherein it was categorically stated that" respondents submit that after having knowledge of the order passed by the Hon'ble Court these respondents have permitted appellant to resume his duty and accordingly these respondents has given letter to appellant on 9-8-1993 therefore these respondents have not committed any breach of the Order of this Hon'ble Court."

7. Obviously, therefore, the petitioners had categorically denied the claim of the respondent that there was any violation of the order passed by the Tribunal and further that

as soon as it was brought to their notice, they had issued a letter to the respondent directing the respondent to join the services, and the said letter was in fact received by the respondent on 9th August, 1998. Apparently, therefore, whatever the petitioners could have done pursuant to the grant of stay was done by them and thereafter it was for the respondent to join the services. It was, therefore, necessary for the respondent to establish that inspite of the said letters, the respondent was prohibited from performing his duties. Neither the impugned judgment nor the materials on record disclosed any such efforts having been made by the respondent, nor the impugned order discloses any application of mind to the said aspect of the matter. Apparently, finding about the violation of the order of the School Tribunal was without any application of mind and without any basis to justify any such finding. Since direction to pay emoluments has been issued solely on account of alleged violation of the order passed by the Tribunal and impugned judgment nowhere discloses any basis to arrive at the finding about violation of the order, the

impugned direction cannot be sustained and is liable to be set aside.

8. Even otherwise law on the point that the School Tribunal is not empowered to exercise power of Contempt of Court for the violation of the order is well settled by the decision of the learned Single Judge in **Mohammad Salam Vs. S.A. Azmi reported in 2001 (1) Mh.L.J.249.**

9. In the result, petition succeeds. The impugned order directing payment of emoluments to the respondent is hereby quashed and set aside.

10. It has been brought to the notice of the Court that while issuing Rule by way of interim relief petitioner was directed to pay to the respondent 50% of the amount payable in terms of the impugned order and in that regard an amount of Rs.24,000/- has already been paid to the respondent. Needless to say that in view of the fact that the respondent was not entitled for any such amount and the said direction issued under the impugned order is unsustainable and the payment having been made

solely on the basis of interim order passed by this Court, it would be in the fitness of the case to direct to the respondent to refund the said amount to the petitioner within a period of 12 weeks from today. However, in the facts and circumstances of the case, I am not inclined to grant any interest on the said amount.

11. Rule is made absolute in above terms with no order as to costs.

[R.M.S.KHANDEPARKAR,J]